

DETAILED ACTION

Receipt is acknowledged of remarks filed on 1/7/08. Claims 10-26 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 103

Claims 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of WO 93/00882 ('882) and 6,231,844('844) and 4,871,530('530).

WO teaches neutralizing hair by applying hair relaxer and then applying neutralizing hair. These steps are known in the art. See paragraph bridging pages 8-9. See page 12, where the neutralizer is applied to hair and left on the hair. The neutralizer is used with chemical like calcium hydroxide, enzyme relaxers, and guanidine hydroxide. All these agents are known as "no lye relaxers". The neutralizer product has acid and surfactant. See page 13 and table 1. The difference between WO document and instant application is WO document does not teach applying neutralizer composition in the form of mousse, which has propellant. Patent '844 teaches hair mousse compositions having surfactant, propellant. See the abstract, col.1, lines 44 et seq, see col.3, lines 5-25, see col.3, lines 30-35 for surfactant, see col.5, lines 50 et seq and col.6, line s1-26 for propellant. Patent at col.6, line 33 suggests that pH adjusters can be added to compositions, See col.9, lines 50-52 also suggests that acids can be included in the compositions. Patent '844 also teaches at col.6, lines 22-25 that the propellants are contained under pressure in a suitable vessel such as pressed dispensing device, which is well known in the art. This meets the claimed requirement of claim 23. See also col.11, lines 65 through col.12. Patent '844 does not teach the limitation of claim 22. Patent '530 also teaches foaming compositions having propellant and surfactant. See the abstract, see col.1, lines 15-21, see col.2, lines 47-58, see

Art Unit: 1615

paragraph bridging col.s 4-5 for various propellants and patent teaches mixtures of propellants. Patent at paragraph bridging col.s 15-16 suggests that other propellants can be used, which includes carbon dioxide. See also col.15, lines 35-53. See col.3, lines 15-55 for surfactant. Patent at col.14, lines 44-51 teaches that these foaming compositions can be used after permanent waving.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to relax the hair and neutralize the hair taught by WO document and modify the neutralizing step using the hair mousse using surfactant, propellant and acid taught by patent '844 and use it after waving since patent '530 teaches analogous foaming compositions having the combination of surfactant, propellant can be applied to hair after hair is relaxed (waving). One of ordinary skill in the art would be motivated to use the mousse compositions after the hair is treated with a relaxing agent since hair mousse compositions provide good style, good feel to the hair and less flaking tendency. This is prima facie case of obviousness.

Response to Arguments

Applicant's arguments filed 1/7/08 have been fully considered but they are not persuasive.

Applicants' argue:

Applicants' claims are directed generally to a method for neutralizing relaxed hair. The method comprises, in part, providing hair that has been treated with a relaxing agent and subsequently contacting the relaxed hair with one or more applications of a neutralizer mousse composition. In rejecting these claims, the Examiner first relies upon

Art Unit: 1615

the '882 reference for its general teaching of applying a hair relaxer to hair followed by an application of a neutralizer rinse to the relaxed hair. Significantly, the Examiner acknowledges that the '882 reference differs from the claimed invention at least because it fails to teach a neutralizing composition that is applied to relaxed hair in the form of a mousse composition. In view of this deficiency, the Examiner relies upon the secondary teachings of the '844 and '530 references to support the assertion that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the neutralizing step of the '882 reference by substituting the neutralizer rinse with a neutralizing mousse composition as claimed. This however is nothing more than unsupported hindsight reasoning and cannot form the basis of a proper obviousness rejection.

As noted by the Examiner, the '844 reference does disclose foaming cosmetic compositions such as hair mousse compositions. However, the '844 reference does not pertain to methods for neutralizing relaxed hair. As such, the '844 reference is silent with respect to compositions that can be used as neutralizers for applying to relaxed hair and fails to teach or suggest that a mousse composition could be formulated and applied as a neutralizer to relaxed hair. Similarly, although the '530 reference also discloses foaming cosmetic compositions suitable for the treatment of the hair or of the skin, it too fails to teach or suggest that such foaming compositions could be formulated and applied as a neutralizer to relaxed hair. In fact, the only teaching or suggestion to apply a mousse composition as a neutralizer to relaxed hair is found in Applicants' own patent application. Therefore, in the absence of the requisite teaching or suggestion in these

Art Unit: 1615

secondary references, it is improper to suggest that one of ordinary skill in the art would have been motivated by the cited references to substitute the neutralizer rinse of the '882 reference with a neutralizer mousse as claimed.”

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

WO document teaches neutralizing rinses, WO document does not teach neutralizing step in the form of mousse. Hair products are conventionally sold in the form of lotion, cream, gel, liquid or mousse. All these forms are known to one skilled in the hair care art. Patent '844 teaches foaming cosmetic compositions using surfactant and propellant. Patent '844 clearly teaches that these compositions can be as hair mousses and applied on the hair. Patent at col.1, ll 35-43 teaches that these hair mousses are formulated for the purpose of styling, setting and arranging or for other purposes such as shampooing, conditioning and treating hair. **Hair styling is same as straightening or relaxing hair.** Therefore patent '844 clearly teaches that the hair mousse can be used for relaxing hair and WO document teaches neutralizer rinses for chemically relaxing hair. Patent '530 was relied for the limitation of claim 22 since patent '844 teaches only propellant. Claim 22 requires the propellant to be mixture of carbon dioxide and another

Art Unit: 1615

propellant. Patent '844 teaches mixtures of propellants used in foaming cosmetic compositions for hair treatment.

One of ordinary skill in the hair care art would use the method of neutralizing the hair of WO document and use neutralizer mousse of '844 instead of neutralizer rinse since mousse has the advantages of providing stable foaming, smooth and mild to touch, stable and clear concentration for better product stability. Product stability is very important to the consumer. The hair mousse also has the additional advantage good style control and less flaking tendency. The suggestion in patent '844 that the hair mousse can be used for styling would prompt one skilled in the hair care art to modify the of WO document by using a neutralizer mousse instead of neutralizer rinse.

In response to applicant's argument with respect to example 4 on pages 22-23 of instant specification, which is based upon example 1 compositions, none of the claims are limited to hair method of neutralizing hair of example 1.

Which propellant is used in mousse concentrate formulations on page 19?

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1615

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1615